



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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David K. Paylor
Director

Michael P. Murphy
Regional Director

October 4, 2016

Virginia Electric and Power Co
Attn: Mark Mitchell
5000 Dominion Blvd
Glen Allen, VA 23060

WARNING LETTER

RE: WL No. 2016-10-PRO-301
Scott Solar Project
Permit No. VAR10I027

Dear Mr. Mitchell:

The Department of Environmental Quality (DEQ or the Department) has reason to believe that Virginia Electric and Power Co may be in violation of the Virginia Stormwater Management Act, Regulations and Permit No. VAR10I027 (the Permit)¹ at the Scott Solar Project (Site).

This letter addresses conditions at the Site and also describes compliance requirements of the Virginia Stormwater Management Act, § 62.1-44.15:24 et seq., Regulations and the Permit. Pursuant to Va. Code § 62.1-44.15(8a), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 et seq. (APA). DEQ requests that you respond **within 7 days of the date of this letter.**

OBSERVATIONS AND LEGAL REQUIREMENTS

On August 11, 2016, September 6, 2016, and September 29, 2016, DEQ staff conducted inspections and file review of the Site. The inspection report is attached. The following describes staff observations and identifies applicable legal requirements:

¹ Permit terms and conditions are found at 9 Virginia Administrative Code (VAC) 25-880-70.

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1. Observations: During the inspection on September 29, 2016, Basin 2 was not constructed per the approved plan. The revised basin design was not submitted for review and approval. The Stormwater Pollution Prevention Plan (SWPPP) was not amended to reflect revised design.

Legal Requirements:

Part II B 1 states: The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.

9VAC25-870-54.G states: The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

2. Observations: During the inspection on September 29, 2016, the SWPPP did not indicate areas that have reached final stabilization.

Legal Requirements:

Part II B 4 (c) states: Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;

9VAC25-870-54.G states: The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

3. Observations: During the inspections on August 11, 2016, and September 29, 2016, all denuded areas requiring temporary or permanent stabilization had not been stabilized, and all stabilization requirements for impaired waters, approved TMDL(s), pollutants concern and exceptional waters, when applicable have not been met.

Legal Requirements:

Part II A.5.b (1) states: Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

9VAC25-840-40.1 states: Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.

4. Observations: During the inspection on September 29, 2016, permanent vegetation cover had not been established that is uniform, mature enough to survive and inhibit erosion.

Legal Requirements:

Part II A.2.(c)8 states: Ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days; and

9VAC25-840-40.3 states: A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.

5. Observations: During the inspections on August 11, 2016, and September 29, 2016, basin 2 had not been installed in accordance with MS-6 and the approved plan.

Legal Requirements:

Part II E(1-2)states: SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.

1. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II F identifies a control measure that is not operating effectively, corrective action(s) shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.

2. If site inspections required by Part II F identify an existing control measure that needs to be modified or if an additional control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm

event. If implementation prior to the next anticipated measurable storm event is impracticable, then alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.

6. Observations: During the inspections on August 11, 2016, and September 29, 2016, stormwater conveyance channels had not adequately been stabilized with channel lining and/or outlet protection.

Legal Requirements:

Part IIA.2(c) states: A properly implemented approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, adequately

9VAC25-840-40.11 states: Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.

7. Observations: During the inspections on August 11, 2016, and September 29, 2016, offsite conveyance conditions did not appear consistent with the approved plan. Offsite discharges are not contained within the downstream conveyance.

Legal Requirements:

9VAC25-840-40.19 states: Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels:

8. Observations: During the inspections on August 11, 2016, and September 29, 2016, measures had not been taken to prevent adverse impact(s) to receiving waters.

Legal Requirements:

Part I G 2a. States: If it is determined by the department that the operator's discharges are causing, have reasonable potential to cause, or are contributing to an excursion above any applicable water quality standard, the department, in

consultation with the VSMP authority, may take appropriate enforcement action and require the operator to:

Modify or implement additional control measures in accordance with Part II B to adequately address the identified water quality concerns;

ENFORCEMENT AUTHORITY

Va. Code § 62.1-44.15:42 of the State Water Control Law provides for an injunction for any violation of the Stormwater Management Act, or any rule, regulation, approved standard and specification, order, or permit condition issued by the State Water Control Board, DEQ, or authorized VSMP authority. Va. Code § 62.1-44.15:48 provides for a civil penalty up to \$32,500 per day of each specified violation. In addition, Va. Code § 62.1-44.15:25 authorizes the State Water Control Board to issue special orders to any person subject to state or VSMP authority permit requirements to comply with the Stormwater Management Act and regulations. Va. Code § 62.1-44.15 authorizes the State Water Control Board to issue orders to any person to comply with the State Water Control Law and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Va. Code § 62.1-44.15:37 authorizes issuance of a notice to comply with permit conditions and further authorizes a stop work order, permit revocation, or enforcement action for failure to comply with such a notice within the specified time period. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the State Water Control Law and regulations. Va. Code §§ 62.1-44.15:48(B) and 62.1-44.15:48(C) provide for other additional penalties.

FUTURE ACTIONS

Within 7 days of the date of this letter, please respond to arrange a prompt meeting with DEQ staff, or provide a written response detailing actions you have taken or will be taking to ensure compliance with state law and regulations. If corrective action will take longer than 90 days to complete, Virginia Electric and Power Co may be asked to sign a Letter of Agreement or enter into a Consent Order with the Department to formalize the plan and schedule. *It is DEQ policy that appropriate, timely, corrective action undertaken in response to a Warning Letter will avoid adversarial enforcement proceedings and the assessment of civil charges or penalties.*

Please advise DEQ if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. Also, if informal discussions do not lead to a satisfactory conclusion, you may request in writing that DEQ take all necessary steps to issue a final decision or fact finding under the APA on whether or not a violation has occurred. For further information on the Process for Early Dispute Resolution, please see Agency Policy Statement No. 8-2005 posted on the Department's website under "Programs," "Enforcement," and "Laws, Regulations, & Guidance"

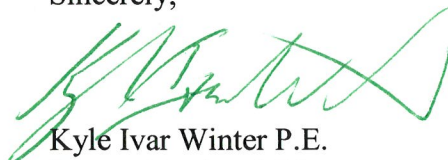
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http://www.deq.virginia.gov/Portals/0/DEQ/Enforcement/Guidance/process%20for%20early%20dispute%20resolution%20no8_2005.pdf

or ask the DEQ contact listed below.

Your contact at DEQ in this matter is Matthew Grant. Please direct written materials to his attention. If you have questions or wish to arrange a meeting, you may reach him directly at (804) 527-5100 or Matthew.Grant@deq.virginia.gov.

Sincerely,



Kyle Ivar Winter P.E.
Deputy Regional Director

cc: CASE FILE
Carla Pool, DEQ Stormwater Enforcement Manager
Matthew Stafford, DEQ Stormwater Compliance and Regulation Coordinator
Matthew Grant, DEQ Stormwater Compliance Specialist
John R. McCutcheon, DEQ Stormwater Manager

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